

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 22, 2007. At the time of the Office Action, Claims 1-18 were pending in this Application. Claims 1-6, 9-15, and 18 were rejected, and Claims 7, 8, 16, and 17 were objected to. Claims 1-3, 6, 10-12, and 15 have been amended. Claim 19 has been added. Applicants respectfully request reconsideration and favorable action in this case.

Specification Objections

The specification was objected to due to informalities. Specifically, the Examiner indicated that references to the claims should not be made in the specification. Applicants deleted the respective paragraph [0011] of the substitute specification.

Rejections under 35 U.S.C. § 102

Claims 1, 2, 10 and 11 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,862,791 issued to Dietbert Schoenfelder et al. ("Schoenfelder"). Applicants respectfully traverse and submit Schoenfelder does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Independent Claim 1 includes the limitation of “*wherein a first injection type in a combustion cycle is deactivated in order to determine an actuator energy of said type from a second injection type.*” According to this definition, a combustion cycle has at least a first injection type and a second injection type. Thus, at least two sequential injections of different types exists within a combustion cycle. However, even though Applicant believes that this definition is clear, Applicant amended this limitation in independent Claim 1 to read : “*wherein a first injection in a combustion cycle is deactivated in order to determine an actuator energy required for said first injection from a second injection in said combustion cycle*”.

The Examiner stated that *Schoenfelder* discloses all the limitations of independent Claims 1 and 10. applicant respectfully disagrees. *Schoenfelder* does not discuss different injections within a combustion cycle. Most importantly, *Schoenfelder* does not disclose to turn a first injection off during a combustion cycle to measure a second injection. According to the independent Claims, the measurement of the second injection is then used to determine the necessary actuator energy for the first injection type.

This specific method of determining the energy for a first injection, for example, a pre-injection in a combustion cycle, requires that such a pre-injection is turned off and the parameters for the pre-injection are determined from a main injection which follows the pre-injection. *Schoenfelder* neither discloses nor suggests such a combustion cycle.

Moreover, *Schoenfelder* neither suggests to turn off one injection to determine any type of parameter for that injection by measuring parameters of another injection. At best *Schoenfelder* teaches to switch between tow different methods of regulating an actuator. However, *Schoenfelder* does not teach to deactivate one injection within a combustion cycle. Even if a control through elements 130/135 and element 140 are regarded as separate injection types, *Schoenfelder* does not teach to turn an injection within a combustion cycle off. *Schoenfelder* merely teaches to switch between two different types of controlling an actuator.

Hence, Applicants believe that all independent Claims are patentable in view of the cited prior art. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102 or §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

Allowable Subject Matter

Applicants appreciate Examiner's consideration and indication that Claims 7, 8, 16, and 17 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicants, however, believes that all amended claims are now allowable as stated above.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
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